

§ 38.1

28 CFR Ch. I (7–1–16 Edition)

§ 38.1 Purpose.

The purpose of this part is to implement Executive Order 13279 and Executive Order 13559.

§ 38.2 Applicability and scope.

(a) A faith-based or religious organization that applies for, or participates in, a social service program supported with Federal financial assistance may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance, whether received through a prime award or sub-award, to support or engage in any explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization.

(b) The use of indirect Federal financial assistance is not subject to this restriction.

(c) Nothing in this part restricts the Department's authority under applicable Federal law to fund activities, such as the provision of chaplaincy services, that can be directly funded by the Government consistent with the Establishment Clause.

§ 38.3 Definitions.

As used in this part:

(a)(1) “Direct Federal financial assistance” or “Federal financial assistance provided directly” refers to situations where the Government or an intermediary (under this part) selects the provider and either purchases services from that provider (*e.g.*, via a contract) or awards funds to that provider to carry out a service (*e.g.*, via a grant or cooperative agreement). In general, and except as provided in paragraph (a)(2) of this section, Federal financial assistance shall be treated as direct, unless it meets the definition of “indirect Federal financial assistance” or “Federal financial assistance provided indirectly.”

(2) Recipients of sub-grants that receive Federal financial assistance through State administering agencies or State-administered programs are recipients of “direct Federal financial as-

sistance” (or recipients of “Federal financial assistance provided directly”).

(b) “Indirect Federal financial assistance” or “Federal financial assistance provided indirectly” refers to situations where the choice of the service provider is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of government-funded payment. Federal financial assistance provided to an organization is considered “indirect” when

(1) The government program through which the beneficiary receives the voucher, certificate, or other similar means of government-funded payment is neutral toward religion;

(2) The organization receives the assistance as a result of a decision of the beneficiary, not a decision of the Government; and

(3) The beneficiary has at least one adequate secular option for the use of the voucher, certificate, or other similar means of government-funded payment.

(c)(1) “Intermediary” or “pass-through entity” means an entity, including a nonprofit or nongovernmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government, such as a State administering agency, that accepts Federal financial assistance as a primary recipient or grantee and distributes that assistance to other organizations that, in turn, provide government-funded social services.

(2) When an intermediary, such as a State administering agency, distributes Federal financial assistance to other organizations, it replaces the Department as the awarding entity. The intermediary remains accountable for the Federal financial assistance it disburses and, accordingly, must ensure that any providers to which it disburses Federal financial assistance also comply with this part.

(d) “Department program” refers to a grant, contract, or cooperative agreement funded by a discretionary, formula, or block grant program administered by or from the Department.

(e) “Grantee” includes a recipient of a grant, a signatory to a cooperative agreement, or a contracting party.